

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

HASAN A. HAJMOHAMMAD

Plaintiff,

VS.

LISA KEHL, District Director,  
U.S. Citizenship and Immigration  
Services, ET AL.

Defendants.

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NO. 3-08-CV-0021-BD

**ORDER**

On August 27, 2008, defendants filed a motion to dismiss this civil action brought by Plaintiff Hasan A. Hajmohammad seeking a hearing on his application for naturalization or, alternatively, an order requiring the United States Citizenship and Immigration Service ("CIS") to adjudicate his application within the time prescribed by law. In support of their motion, defendants contend that this court lacks subject matter jurisdiction because plaintiff is currently in removal proceedings, his status as a lawful permanent resident is in question, he is no longer eligible to become a naturalized citizen, and his application for naturalization has been denied. Plaintiff has not filed a written response to the motion. Instead, plaintiff filed his own motion for voluntary dismissal under Fed. R. Civ. P. 41(a)(1).<sup>1</sup>

It is not clear whether plaintiff opposes defendants' motion to dismiss for lack of subject matter jurisdiction or whether defendants oppose plaintiff's motion for voluntary dismissal.

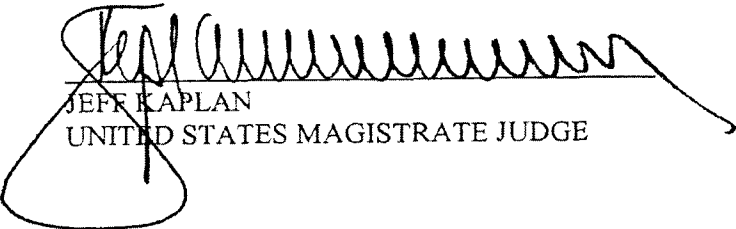
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<sup>1</sup> Plaintiff's motion accuses defendants of retaliation, bad faith, and unethical conduct by initiating proceedings to revoke his immigration status. However, plaintiff does not address any of the substantive arguments raised by defendants in support of their motion to dismiss.

Although the parties move for dismissal on different grounds, the relief granted by the court would be the same--a dismissal without prejudice. *Compare Sepulvado v. Louisiana Bd. of Pardons and Parole*, 114 Fed.Appx. 620, 622, 2004 WL 2491678 at \*2 (5th Cir. Nov. 5, 2004) (dismissal for lack of jurisdiction under Rule 12(b)(1) is without prejudice) *with* Fed. R. Civ. P. 41(a)(2) (voluntary dismissal by court order is without prejudice unless the order states otherwise). Accordingly, counsel are directed to confer on each other's motion in an attempt to reach agreement on the basis for dismissal of this case. If such an agreement is reached, the parties shall file a joint stipulation of dismissal by 3:00 p.m. today. Otherwise, counsel shall appear at the pretrial conference on September 5, 2008 at 9:00 a.m.

SO ORDERED.

DATED: September 4, 2008.

  
JEFF KAPLAN  
UNITED STATES MAGISTRATE JUDGE